

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
December 3, 2008 Session

**ROY B. PARSONS, JR., Individually, and as next of kin of EMMA JEAN
PARSONS, deceased, v. DARLA JANE NEWTON**

**Direct Appeal from the Circuit Court for Hawkins County
No. 05CV00514 Hon. Kindall T. Lawson, Circuit Judge**

No. E2008-00287-COA-R3-CV - FILED MARCH 30, 2009

In this action plaintiff filed for uninsured motorist coverage for the death of his wife who was a passenger in her vehicle at the time of the accident from his insured, State Farm. The Trial Judge held State Farm's policy's uninsured motorist coverage was applicable to the deceased and defendant has appealed. We reverse the Judgment of the Trial Court on the grounds that only GMAC's policy on decedent's vehicle provided uninsured motorist coverage.

Tenn. R. App. P.3 Appeal as of Right; Judgment of the Circuit Court Reversed.

HERSCHEL PICKENS FRANKS, P.J., delivered the opinion of the Court, in which CHARLES D. SUSANO, JR., J., and JON KERRY BLACKWOOD, SP.J., joined.

Daniel D. Coughlin, Bristol, Tennessee, for appellant, Darla Jane Newton.

Albert J. Harb, Knoxville, Tennessee, for appellee, Roy B. Parsons.

OPINION

Plaintiff, Roy B. Parsons, Jr., ("Parsons"), filed suit individually and as the surviving spouse of Emma Jean Parsons, against Darla Jean Newton, seeking payment of medical expenses, funeral expenses, and other damages, for his injuries and his wife's death in an automobile accident

caused by defendant.¹ GMAC filed an Answer, asserting that it had a policy applicable to this claim, with limits of \$100,000.00 per accident. State Farm also filed an Answer admitting that it had a policy applicable to this claim, with limits of \$250,000.00 per person and \$500,000.00 per accident. Newton also answered, denying liability.

State Farm filed a Motion for Summary Judgment, arguing that there was no coverage under its policy. Plaintiff filed a Motion for Summary Judgment, and asserted that he had an uninsured motorist policy with State Farm, under which the deceased was an insured. Plaintiff asserted that the State Farm policy had limits of \$250,000.00, and it should pay him the difference between the \$250,000.00 limit and the amount paid by the GMAC policy and decedent's liability policy. State Farm filed a Second Motion for Summary Judgment, asserting that Tenn. Code Ann. §56-7-1201(b)(2) precluded recovery under any uninsured motorist policy other than the one on her vehicle.

The Trial Court entered an Order, finding that the GMAC policy issued to the deceased insuring the 1998 Subaru was the primary uninsured motorist coverage for Parsons. The Court held that plaintiff was an insured under the GMAC policy for the \$50,000.00 of uninsured motorist coverage, and he was thus granted judgment for the same against GMAC.

The Court then entered another Order, granting plaintiff summary judgment against State Farm, finding that the State Farm policy was secondary uninsured motorist coverage, and that the plaintiff was a named insured under the State Farm policy, and thus he was granted judgment of \$250,000.00 against State Farm, less the \$50,000 to be paid by Newton's liability carrier and GMAC. The Court found that decedent was also insured under the State Farm policy, and thus the basis for the judgment.

The Court denied State Farm's Motion for Summary Judgment, and directed that the judgment be entered as final.

State Farm appealed.

Plaintiff also filed a Motion to Assess Pre-Judgment Interest on the judgment entered against State Farm, and the Court entered an Order granting plaintiff pre-judgment interest from November 29, 2007 to January 15, 2008. State Farm also filed a Notice of Appeal as to this Order.

The issues on appeal are:

1. Whether the Trial Court erred in granting summary judgment to plaintiff against State Farm?

¹At the time of the accident, plaintiff was operating a vehicle, a 1998 Subaru, owned by his wife who was a passenger in the vehicle.

2. Whether the Trial Court erred in granting pre-judgment interest to plaintiff?

State Farm argues that the Trial Court erred in granting summary judgment to plaintiff because Tenn. Code Ann. §56-7-1201 limits plaintiff to the uninsured motorist coverage provided in the policy issued on her own vehicle only, and because the State Farm policy specifically excluded coverage when an insured was injured while in a vehicle owned by that individual, but not insured by State Farm's policy. The latter argument is determinative of this issue.

The State Farm policy at issue states that uninsured motorist coverage does not apply "for bodily injury to an insured while occupying a motor vehicle owned by or leased to the insured if it is not insured for coverage U or coverage U1 under this policy." It is not disputed that the vehicle in this instance was owned by decedent. There is also no dispute that her vehicle was not insured under this State Farm policy, but rather, that she had insurance on it through GMAC. Under the clear language of this exclusion, the uninsured motorist coverage in State Farm's policy would not apply.

Plaintiff argues that the exclusion does not apply in this instance, because the term "insured" as used in the exclusion refers only to the named insured, i.e. the plaintiff. A review of the policy language, however, demonstrates that this is not the case. The policy states that both the named insured and his/her spouse are "insured" under the policy, and the exclusion simply uses the term "insured" and not "named insured". Plaintiff further argues that if the exclusion were enforced in this manner, it would be invalid as against public policy, because the uninsured motorist statutes were intended to provide broad coverage for the protection of persons. Plaintiff's argument is in the face of the case law from this state, however, that upholds such exclusions and recognizes that the legislative purpose behind the uninsured motorist statutes was to provide "less than broad coverage". *Hill v. Nationwide Mutual Insurance Co.*, 535 S.W.2d 327 (Tenn. 1976).

Numerous Tennessee cases have upheld similar policy exclusions. *See Hill, supra*; *Graves v. Tennessee Farmers Mut. Ins. Co.*, 671 S.W.2d 841 (Tenn. Ct. App. 1984); *Smith v. Hobbs*, 848 S.W.2d 662 (Tenn. Ct. App. 1993); *Elam v. Protective Ins. Co.*, 1990 WL 458 (Tenn. Jan. 8, 1990). *See also Prudential Property & Cas. Co. v. Best*, 129 Fed. Appx. 221 (6th Cir. 2005).

The *Graves* decision is instructive. The *Graves* Court ruled that a similar exclusion would apply because the plaintiff was an insured, and was injured while occupying a vehicle owned by her, but which was not the automobile described by Tennessee Farmers Mutual Insurance Company. The Court recognized that in *Hill*, the Supreme Court ruled that such exclusions were not illegal nor contrary to public policy. *Id.*²

In sum, decedent, who was an insured according to the policy terms, was killed while occupying a vehicle owned by her but not insured under the subject policy. As such, the exclusion

² Thus, contrary to appellee's assertions, there is no need to resort to decisions explaining the public policy of other states, as this State has addressed and rejected this argument.

applies and her Estate is not entitled to uninsured motorist benefits. We reverse the Trial Court's granting summary judgment to plaintiff, and grant summary judgment to State Farm on the claims for the death of Mrs. Parsons.

State Farm also argues the Trial Court erred in awarding plaintiff prejudgment interest, because to do so would impermissibly raise the policy limits. The policy states that the amount of coverage for all compensatory damages due to bodily injury is that shown in the limits of liability on the declarations page (which is undisputed to be \$250,000.00). As has been previously held by this Court, prejudgment interest is in the nature of damages, and thus is "encompassed by the limiting language of the policy". *Thurman v. Harkins*, 2005 WL 1215959 (Tenn. Ct. App. May 23, 2005); *Malone v. Maddox*, 2003 WL 465668 (Tenn. Ct. App. Feb. 25, 2003). Accordingly, prejudgment interest cannot be imposed if it would raise the contractual policy limits, as in this case. We reverse the Trial Court's award of prejudgment interest.

The Judgment of the Trial Court is reversed and the summary judgment is granted to State Farm on the issue of coverage. The cost of the cause is assessed to plaintiff, Roy B. Parsons, Jr.

HERSCHEL PICKENS FRANKS, P.J.